

82-1133
No.

FILED
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ALEXANDER L. STEVENS

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

**PILAR LOWENTHAL, JEAN ARTHUR
LOWENTHAL, JR. AND MARIA LORETO LOWENTHAL,**
Appellants,

v.

**MORTON E. ROME, SURVIVING
PERSONAL REPRESENTATIVE OF THE
ESTATE OF JEAN ARTHUR LOWENTHAL, AND
ROLF LINDNER,**
Appellees.

**ON APPEAL FROM THE COURT OF APPEALS
OF MARYLAND
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

I.

Did Maryland's recognition of a Spanish Court's annulment on religious grounds of a valid Gibraltar marriage between a Spanish national and a United States citizen violate Appellant's right to the free exercise of religion under the first Amendment to the Constitution of the United States?

II.

Did the Maryland Court of Appeal's interpretation of the term "voluntary" in Md. Code, Estates and Trusts Article 1-202(b) deprive Appellant of property rights without due process of law?

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AUTHORITIES

Plyler v. Doe, ____ U.S. ____, 102 S.Ct.
2382 (1982)

Shaughnessy v. Mezei, 345 U.S. 206 (1953) . .

Sherrer v. Sherrer, 334 U.S. 343 (1948) . . .

Wong Wing v. United States, 163 U.S.
228 (1896)

Maryland Code, Estates and Trusts Art.,
§1-202(b)

Maryland Constitution, Declaration of Rights,
Article 36

First Amendment, United States Constitution

Fourteenth Amendment, United States
Constitution

LOWER COURT OPINION

____ MD. ____, 449 A.2d 411 (1982)

JURISDICTIONAL GROUNDS

This appeal is taken from a decision of the Court of Appeals of Maryland on September 3, 1982. Appellant's Petition for Reconsideration and Request for Stay of Mandate of that decision was denied October 5, 1982. Jurisdiction over this appeal is granted by 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES

1. Maryland Code, Estates and Trusts Article, Section 1-202.

- (a) Valid divorce. - No person who is validly divorced a vinculo matrimonii from the decedent or whose marriage to the decedent has been annulled is a surviving spouse.
- (b) Divorce in another State. - No person who has voluntarily appeared in a proceeding in which an a vinculo matrimonii divorce between the decedent and the survivor, or an annulment of their marriage was obtained, even though not recognized as valid in this state, is a surviving spouse. This subsection does not apply if the parties to the divorce or annulment subsequently remarry each other.
- (c) Marriage to a third party. - No person who participates in a marriage ceremony with a third person, after a decree or judgment of divorce or annulment obtained by the decedent, is a surviving spouse.
- (d) Conviction of bigamy. - No person who has been convicted of bigamy while

married to the decedent is a surviving spouse. (An. Code 1957, art. 93, Section 1-202; 1974, ch. 11, Section 2.)

2. Maryland Constitution, Declaration of Rights, Article 36.

That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry; nor shall any person otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief, provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come.

Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place.

Nothing in this article shall constitute an establishment of religion. (1970, ch. 558, ratified Nov. 3, 1970.)

3. First Amendment to this Constitution of The United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

4. Fourteenth Amendment to the Constitution of the United States:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONCISE STATEMENT OF THE CASE

Appellant is a Spanish citizen of the Catholic faith. On August 25, 1959, she married Jean Arthur Lowenthal, an American citizen of the Jewish faith domiciled at all times in the State of Maryland. Under then-Spanish law, a Catholic was prohibited from marrying non-Catholics in a religious ceremony in Spain. Nor could a civil ceremony

be performed between a Catholic or non-Catholic unless the Catholic first renounced his or her religious faith. In order for Appellant to marry and still retain her right actively to practice her religious faith, she accompanied Jean Arthur Lowenthal to Gibraltar and was married in a civil ceremony. The civil ceremony in Gibraltar between Catholic and non-Catholic was recognized as valid both in Gibraltar and in Maryland. Appellant was not aware of any possible invalidity of her marriage under then-Spanish law.

After the separation of the parties in 1961, Jean Arthur Lowenthal initiated legal proceedings in Spain to have the marriage annulled on the grounds of its religious invalidity under then-Spanish law. Appellant appeared under compulsion of process and asserted the validity of the Gibraltar marriage at every stage of the Spanish legal proceedings. Appellant has continued to assert the validity of her marriage to Jean Arthur Lowenthal at all times.

The annulment was granted by the Spanish Court of highest resort on the grounds of its religious invalidity in Spain at that time. Amendments to the Spanish Constitution in 1978 later aligned that country's religious freedoms with our own. In Spain today, and at the time Appellant asserted her rights as a surviving spouse in the Maryland Courts, a person of any faith could participate in a civil marriage ceremony in Spain or in other countries without first being compelled to renounce (or declare) his or her religious faith.

At the time of Jean Arthur Lowenthal's death, the majority of his property was situated in Baltimore, Maryland. Probate proceedings were commenced in the Orphans' Court of Baltimore City. Appellant appeared in the probate proceedings and claimed an interest in Jean Arthur Lowenthal's estate as his surviving spouse. Appellant asserted that the Spanish annulment had no binding effect on the Maryland Courts, and that a recognition of the

Spanish annulment (1) would be a violation of her right as a non-resident alien to the free exercise of her religious beliefs under the United States and Maryland Constitutions, and (2) would contravene the strong public policy of Maryland in favor of the free exercise of individual religious beliefs. The Orphans' Court of Baltimore City declared that Appellant was bound by the Spanish annulment and could not assert her rights as the surviving spouse of Jean Arthur Lowenthal. Their decision was appealed directly to the Maryland Court of Appeals.

Appellant's right to the protection of her First Amendment right to religious freedom was raised argument and brief in the Orphans' Court of Baltimore City and in both briefs and argument and briefs before the Maryland Court of Appeals. Both Courts ignored Appellant's contentions, thus denying her Constitutional rights. The following portions of the trial transcript are pertinent (All page

references are to the transcript of proceedings in the Orphans' Court of Baltimore City):

MR. ALEXANDER (Appellant's counsel): "England has two cases on this point, and so we are using them as authority because England has had two cases involving Malta civil marriages between a Catholic and a Non-Catholic which were later annulled but then the question came up in the English courts to the validity of the annulment. The English Court said we do not recongize the annulment because that annulment is against our strong public policy, namely, our policy in favor of freedom of religion. Accordingly, those English cases are authority for what Maryland and the courts in the United States would hold, we submit." (Vol. I, 28, 29).

MR. ALEXANDER (Appellant's counsel): "We will prove under the law of Spain, if you have a civil ceremony in Spain and you are a Catholic, you must go before the magistrate, and you must

declare your faith. Now, if you wish to be married civilly, you would have to declare under oath, I am not a Catholic. Now, on the other hand, to go and engage in a civil ceremony under the religious law of Spain is not an occasion for being debarred from the Catholic faith. That is not a matter of the state law of Spain. That is a matter of the Catholic faith.

She married outside the church in a civil ceremony in Gibraltar, but that does not in and of itself debar her from practicing the Catholic faith, and she never has to go before a tribunal as she would in Spain to be married civilly and say, no, I am not a Catholic.

It might be the church would not recognize, the Catholic Church would not recognize her marriage, but that does not mean she ceases to be Catholic. That is in terms of the distinction between canonical and civil law." (Vol. II, 12-13).

MR. ALEXANDER (Appellant's counsel): "One of the principal issues in this case is the doctrine of comity. We will present to the Court authority which maintains that the marriage entered into between Jean Arthur Lowenthal and Pilar Lowenthal being valid where it was performed is valid in the United States. Furthermore, the annulment between the two being based upon a religious affinity is a grounds for annulment which is against strong public policy of both the United States and the State of Maryland as expressed in their constructions and in their statutes; that this Court under the doctrine of comity does not have to give respect to a finding of a foreign country which is opposed to our public policy."

(Vol. II, 40-41).

PILAR LOWENTHAL (Examination By Mr. Alexander):

Q. "You are a citizen of Spain and have lived in Spain your entire life?"

A. "Yes."

- Q. "What is your religion?"
- A. "Catholic."
- Q. "Were you baptized and confirmed in that religion?"
- A. "Yes."
- Q. "Have you practices that religion throughout your life to the present?"
- A. "Yes." (Vol. II, 55)
- Q. "Why did you and Jean Arthur Lowenthal go to Gibraltar to be married?"
- A. "Because we were of different religion and we could not contract matrimony in Spain."
- Q. "What did you think his marital status was when you entered into the propoerted ceremony in Zurich?"
- A. "I thought that he was a single man and he called me several times from this country previous

to that ceremony asking me to marry him." (Vol. II, 63)

Q. "Why did you go to Gibraltar to marry?"

A. "Because if I did not go out of Spain to get married, I would have to resign my Catholic faith." (Vol. II, 3-4)

EXAMINATION OF PILAR LOWENTHAL BY JUDGE WILLIAMS:

JUDGE WILLIAMS: "Was she aware at the time she went through the ceremony with Mr. Lowenthal in Gibraltar her native country of Spain would not recognize that marriage as being legal?"

MR. CRUZ: "Should I ask the question again, sir, because the reply, I don't think she understood my question?"

JUDGE WILLIAMS: "Ask the question again, of course."

THE WITNESS: "I didn't know at the time."

JUDGE WILLIAMS: "When did she first learn that her marriage would not be recognized in her native country in Spain?"

THE WITNESS: "I didn't know for a time it was not going to be recognized in Spain."

JUDGE WILLIAMS: "In other words, she never knew then is that what she is saying, she never knew the marriage was invalid in Spain?"

THE WITNESS: "No, never." (Vol. II, 10-11)

EXAMINATION OF JOSE ANTONIO ROBLES RODRIGUEZ,
AN EXPERT ON SPANISH CIVIL LAW, BY MR.
ALEXANDER:

Q. "Under the then-Spanish law,
could a person of the Catholic
faith marry in a civil ceremony
and declare themselves to be a
Catholic?"

A. "No."

Q. "Was as a part of a civil
ceremony in Spain a declaration

of religious faith required?" A.

"Yes."

Q. "If a person then asked by the magistrate said, I am of the Catholic faith, there then could be no civil marriage, is that correct?"

A. "No." (Vol. II 28-29)

Q. "Can today or since 1978 a person of the Catholic faith marry a person of the non-Catholic faith in a civil ceremony in Spain?"

A. "Yes."

Q. "Similarly, if such a marriage were entered into in Gibraltar or in the United States, would it be recognized in Spain."

A. "Yes." (Vol. II, 45)

Appellant's rights to the protection of the Fifth and Fourteenth Amendments to the Constitution of the United States were asserted in her Motion for Reconsideration and Request

for Stay of Mandate, filed in the Court of Appeals of Maryland on October 1, 1982. These claims were also ignored by the Court.

ARGUMENT

Appellant is a non resident alien who was validly married to a United States citizen. Her Husband owned property situated in the United States at all times during the marriage and at the time of his death. As a non-resident alien, Appellant was entitled to the protection of the United States constitution when she asserted her right as a surviving spouse to share in her American husband's estate then being probated in the Orphans' Court of Baltimore City. Plyler v. Doe, ____ U.S. ____, 102 S.Ct. 2382 (1982); Shaughnessy v. Mezei, 345 U.S. 206 (1953); Wong Wing v. United States, 163 U.S. 228 (1896). Appellant's constitutional rights were ignored by the Maryland Court of Appeals. In denying to Appellant the status of a surviving spouse, Maryland gave extraterritorial effect to a Spanish annulment of a valid Gibraltar marriage

granted on a narrow religious grounds now no longer recognized as valid even in Spain. By so doing, Appellant's right to the free exercise of her religious beliefs under the first Amendment to the Constitution of the United States was completely ignored.

The Maryland Court of Appeal's interpretation of the word "voluntary" in Md. Code, Estates and Trust Art., §1-202(b) deprived Appellant, and other spouses similarly situated, of property rights without due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. Appellant continually proclaimed the validity of her marriage in the Spanish annulment proceeding. She appeared only under the compulsion of process to protect her interests under then-Spanish law. The Maryland Court of Appeals has labelled this a "voluntary" appearance which forever binds Appellant to the results of a Spanish annulment granted on narrow religious grounds. Her right to share in her American husband's American

estate has thus been arbitrarily denied without due process of law. Sherrer v. Sherrer, 334 U.S. 343 (1948).

This interpretation of "voluntary" also jeopardizes the marital and property rights of any Maryland citizen whose spouse seeks a divorce or annulment in a foreign jurisdiction. It will effectively prevent a spouse from promptly contesting a foreign divorce or annulment out of a fear that a "voluntary" appearance (even to proclaim the continuing validity of the marriage) will subsequently bar them from taking as a "surviving spouse" under Maryland's laws of testamentary disposition. A spouse is forced to give up the right to protest an unlawful dissolution of their marriage, if they wish to retain the right to participate in testamentary disposition.

These denials of Appellant's constitutional rights present important questions of federal law which have not been, but should be, settled by this Court. The full

extent of the rights of non-resident aliens to the protection of the United States Constitution remains unclear and of continuing concern. Plyler v. Doe, ____ U.S. ____, 102 S.Ct. 2382 (1982). Although Appellant is a non-resident alien, she married an American citizen who owned property in America during the marriage and at the time of his death. The arbitrary termination of her marital status by a Spanish Court on grounds offensive to the First Amendment to the Constitution of the United States is a manifest in justice. The parochial action of the Spanish Court cannot be allowed to forfeit Appellant's right to her legitimate marital status in the Courts of Maryland. Whatever effect the Spanish Court decision had on the parties property rights to Spanish property, it cannot be allowed to affect rights to American property without violating important Constitutional rights of Appellant.

Respectfully submitted.

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